

## **Minutes of Regular Meeting of January 8, 2013**

### **REGULAR MEETING**

**CALL TO ORDER 7:35 P.M.**

### **ROLL CALL**

COUNCILMEMBERS PRESENT: Feierbach, Lieberman, Braunstein, Warden, Wozniak

COUNCILMEMBERS ABSENT: None

Staff Present: City Manager Scoles, City Attorney Rennie, Police Chief DeSmidt, Fire Chief Fry, Community Development Director de Melo, Finance Director Fil, Human Resources Director Dino, Public Works Director Oskoui, Parks and Recreation Director Gervais, Interim Information Services Manager Eggers, Senior Planner DiDonato, City Treasurer Violet, City Clerk Cook

### **PLEDGE OF ALLEGIANCE**

Led by Fire Chief Fry

### **SPECIAL PRESENTATIONS**

#### **Proclamation Honoring Cori McKenzie Upon Her Retirement as Principal of Central School**

Mayor Wozniak presented the Proclamation.

**Cori McKenzie**, Retiring Principal, stated that she fell in love with Central School as a substitute teacher there. She stated she has had a satisfying career and she acknowledged the staff, parents and students.

#### **Proclamation Honoring "Nitro" Upon His Retirement from K-9 Service**

Police Chief DeSmidt stated that the City of Belmont has had a long history of K9 units. He noted that Nitro served longer than anticipated.

Mayor Wozniak presented the Proclamation.

#### **Oath of Office of New Public Safety Officers**

Police Chief DeSmidt introduced and provided background on new Police Officer Jim O'Connor and new Community Service Officer Eric Gonzales. City Clerk Cook administered the Oath of Office, and Officers O'Connor and Gonzales' mothers pinned their badges.

Police Officer/Volunteer Coordinator Bob McGriff introduced the new volunteers in the Police Department.

#### **Oath of Office of Deputy Fire Chief Gaffney**

Fire Chief Fry explained the new management structure for the Belmont Fire Department through the agreement with the San Mateo/Foster City Fire Department. He provided a background of Deputy Fire Chief Gaffney's career in the Belmont Fire Department. City Clerk Cook administered the Oath of Office, and Deputy Fire Chief Gaffney's wife pinned his badge.

Deputy Fire Chief Gaffney thanked the City for the opportunity. He congratulated Chief Fry on his retirement. He thanked the firefighters for their support. He introduced his family, and he acknowledged the partnership with the San Mateo/Foster City Fire Department.

#### **Proclamation Honoring Fire Chief Doug Fry Upon His Retirement**

Mayor Wozniak acknowledged Chief Fry's role in helping the City through the dissolution of the Belmont-San Carlos Fire Department and the reorganization of the Belmont Fire Department as a stand-alone organization. She presented the Proclamation.

Fire Chief Fry stated that he had many good opportunities in his career, and he thanked the City for appointing him Chief. He introduced his family.

**Nicole Fernandez**, on behalf of Senator Jerry Hill, presented Chief Fry with a Proclamation.

City Manager Scoles presented a Proclamation from the San Mateo County Board of Supervisors who were unable to attend this evening due to their reorganization meeting.

City Councilmembers added their own comments and congratulations for Chief Fry.

**RECESS: 8:15 P.M.**

**RECONVENE: 8:35 P.M.**

#### **PUBLIC COMMENTS AND ANNOUNCEMENTS**

**Perry Kennan**, Belmont resident, thanked members of the City Council for meeting with residents regarding the San Juan Canyon properties. He suggested that Mayor Wozniak schedule a State of the City address in the near future.

**Kevin Sullivan**, Belmont Parks and Recreation Commissioner, commented regarding the proposed Davey Glen Park, which will be coming before the City Council at the next meeting. He stated that the new design is responsive to input and is within the allocated budget. He stated that a park has been committed for this property and is supported by many in the community. He also thanked the Police Department for its assistance with traffic control during a recent group bike ride.

#### **COUNCIL MEMBER COMMENTS AND ANNOUNCEMENTS**

Mayor Wozniak announced that the annual Commission recruitment is under way. She also announced that the City Council would be holding a study session regarding the San Juan Canyon properties.

Council concurred to hold this study session on January 29<sup>th</sup>.

#### **CONSENT CALENDAR**

Councilmember Warden commented regarding the summary of his outgoing Mayor remarks as reflected in the minutes of December 11<sup>th</sup>. He stated that he meant everyone, not just the City Council, when he discussed accomplishments for the year.

City Clerk Cook stated that she would make the change in the minutes.

Councilmember Braunstein expressed concern regarding the associated costs and potential for unlimited increases in costs for the Service Agreement with Vision Internet for the new website.

Councilmember Wozniak stated that the revised report answered the questions that she had from the previous version, and she stated that staff would monitor expenses.

Councilmember Feierbach expressed a desire that information is kept up to date on the new website.

Councilmember Lieberman expressed concern regarding the proposed costs for optional consulting services. Interim Information Services Manager Eggers explained that those costs included airfare to bring the consultant on site, if necessary.

**Perry Kennan**, Belmont resident, commented regarding the City Council Meeting Minutes of December 11<sup>th</sup> regarding the San Juan Canyon properties. He suggested that the City Council be prepared for future meetings on this topic. He also commented regarding the Financial Reports and noted that there have been no payments to CalPERS since July of 2012. He asked how the streets were chosen for the Surface Transportation Program Fund Application.

#### **APPROVAL OF CONSENT CALENDAR**

**Approval of** Minutes of the Special and Regular Meeting of November 27, 2012, and December 11, 2012, and Regular Belmont Fire Protection District Meeting of December 11, 2012

**Motion to** Receive Monthly Financial Reports

**Approval of** Resolution 2013-001 of the City Council Awarding a Service Agreement to Vision Internet for the Design and Implementation of the City Website

**Approval of** Resolution 2013-002 of the City Council Authorizing the City Manager to File an Application for Surface Transportation Program (STP) Funds

**Approval of** Resolution 2013-003 of the City Council Approving Emergency Repairs to the North Road Sewer Pump Station for an Amount not to Exceed \$15,000

**Approval of** Resolution 2013-004 of the City Council Adopting a Complete Streets Policy

**Approval of** Resolution 2013-005 Authorizing Rates for Service Agreements with Colantuono & Levin for Legal Services Related to Financial and Other Matters

**ACTION:** On a motion by Councilmember Warden, seconded by Councilmember Braunstein, the Consent Agenda was unanimously approved by a show of hands, amended to correct the minutes of December 11, 2012.

#### **HEARINGS**

##### **Public Hearing to Adopt an Ordinance Regulating Single-Use Carryout Bags**

Community Development Director de Melo stated that the first reading of the proposed ordinance took place in November 2012. He outlined the actions to be taken, and explained that the ordinance would take effect in April.

Mayor Wozniak opened the Public Hearing.

**Mike Swire**, Hillsborough resident, stated that the ordinance was endorsed by the Green Advisory Committee and is supported by many residents. He pointed out that many people are already using reusable bags.

**ACTION**: On a motion by Councilmember Braunstein, seconded by Councilmember Feierbach, the Public Hearing was unanimously closed by a show of hands.

**ACTION**: On a motion by Councilmember Warden, seconded by Councilmember Braunstein, Resolution 2013-006 Finding Adoption of an Ordinance Regulating Single Use Carry Out Bags to be Within the Scope of the County's Final Program EIR for County-Wide Implementation of the Ordinance (State Clearinghouse # 2012042013) was unanimously approved by a show of hands.

**ACTION**: On a motion by Councilmember Braunstein, seconded by Councilmember Lieberman, Ordinance 1069 Adopting by Reference San Mateo County Ordinance Code Chapter 4.114 Reusable Bags" and Amending the Belmont City Code by Reorganizing Chapter 31 Waste Reduction Into Article I "Single-Use Carryout Bags" And Article II "Polystyrene Food Service Ware" was unanimously approved by a show of hands.

**Public Hearing to Consider a Single Family Design Review, Roadway Vacation, Lot Line Adjustment, Floor Area Transfer, and Major Encroachment Permit to Allow for Construction of an new 2,372 Square-Foot Single-Family Residence on Two Vacant Lots on Alhambra Drive (APN:043-232-080 and 043-232-230)**

Councilmember Warden stated that he would need to recuse from participating in this matter as he has a potential business conflict with a neighbor. He stepped off the dais and out of the room.

Senior Planner DiDonato reviewed the Planning Commission's discussion and decision on entitlements for this project. He described the property and existing zoning. He outlined the findings to be made in order to approve the vacation of the right of way. He pointed out that the City does not plan to widen the street, and vacating the right of way would provide relief from maintenance. He also reviewed the encroachment request and noted that the applicant would be merging two lots for this project. He stated that the total floor area would be 2,370 square feet after the transfer of density from the sending lot.

Senior Planner DiDonato also outlined the components of the single family design review, and described tree removal. He pointed out that the majority of the trees would be retained. He provided an overview of the grading and hardscape plan, as well as the Construction Management Plan. He noted that truck routes would be addressed in the final conditions of approval.

Discussion ensued regarding how a building story is measured.

**Jeff Rice**, Architect on behalf of Applicant, provided a history of this project. He noted that the house size was reduced and other design components were changed as a result of previous

hearings. He explained that a parking space would be created in the vacated right of way, and noted that the Planning Commission expressed its preference for landscaping instead of a parking space. He explained that all issues have been addressed, and he clarified that most of the right of way on Alhambra is 40 feet.

City Attorney Rennie explained that the right of way has never been used since the subdivision was created in the 1920's. He noted that when the right of way is vacated, it will be added to the applicant's property for purposes of property tax assessment.

Public Works Director Oskoui described how an easement is created for infrastructure access during the creation of a subdivision. He noted that property tax is not assessed unless the property is solely used by the property owner.

**Laura Tan**, Applicant, provided a history of the development of this project. She expressed her desire that the design fit the land and minimize impact. She pointed out that the home has been improved through the design process.

Mayor Wozniak opened the Public Hearing.

**Pierre St. Hilaire**, Belmont resident, questioned how a geologist could approve this project. He pointed out that a great deal of water flowed through this property during the storms of 1998. He questioned whether this lot was buildable.

**Joe Betts-LaCroix**, Belmont resident, stated that relief of maintenance of the vacated right of way sets a precedent. He expressed concerns regarding the gully that exists on the property, and questioned the Pd designation (potential deep landslide failure) of this lot. He stated that neighbors are willing to purchase the property and create a permanent conservation easement.

**Tim Robertson**, Belmont resident, expressed concern regarding this project. He pointed out that the San Juan Hills Area Plan (SJHAP) advises that development should be most restrictive, and that a great deal of engineering and excavation will be required to build this home. He expressed concern that there will be an attempt to extend Monte Cresta Drive. He stated that the project is not consistent with the SJHAP or the General Plan, and will have long-term consequences.

**Lisa Betts-LaCroix**, Belmont resident, expressed her desire for a safe living environment for the neighbors. She pointed out that parking will be reduced as a result of the project. She commented that the construction timeline is unrealistic, and she expressed concerns regarding the hauling of dirt on narrow streets. She stated this will have a negative affect on property values.

**Yumi Prentice**, Belmont resident, expressed opposition to the project. She stated that the design is inconsistent with the neighborhood and includes an 18-foot high garage. She pointed out that the amount of grading under the current design is increased from the previous design. She commented that the project is not in compliance with design guidelines, and should be restricted on properties with steep slopes. She stated that the house will tower over others in the area, and will be built on the steepest part of the property. She commented regarding the impact of construction. She expressed concerns regarding air pollution during the hauling phase.

**ACTION:** On a motion by Councilmember Wozniak, seconded by Councilmember Braunstein, the Public Hearing was unanimously closed by a show of hands (4-0, Warden recused).

Councilmember Feierbach expressed concern regarding the gully on the site. She pointed out that there will always be impacts associated with construction. She stated that street parking is not owned by the residents. She commented that the applicant modified the project as a result of previous concerns. She noted that the issue of building on steep slopes applies to subdivisions, not to a lot of record.

Mr. Rice responded regarding the gully. He pointed out that the soils engineer and the City's geotechnical expert indicated that this was a one-time event. He clarified that the gully will be restored and will be backfilled to protect the exposed tree roots.

Senior Planner DiDonato pointed out that the engineering plan has been designed for a 100-year storm and has been reviewed by the City Engineer. Public Works Director Oskoui added that the the engineering design is state of the art.

Councilmember Lieberman acknowledged the concerns of the neighbors. He noted that the City cannot deny a project due to construction issues. He stated he was relying on the expertise of staff regarding the drainage issues. He pointed out that the building was redesigned as a result of direction from the City Council and the Planning Commission.

Discussion ensued regarding the two-year construction timeline. Mr. Rice noted that this was a conservative estimate and he pointed out that the physical constraints of the property could result in a longer construction timeline.

Councilmember Braunstein stated that he had concerns regarding the issue of the gully and pointed out that staff has advised that this can be mitigated and resolved. He expressed the need to rely on professionals.

Mayor Wozniak noted that this is a difficult project in a sensitive area, and pointed out that many entitlements are needed. She expressed a concern regarding the gully, and expressed a desire to understand more relative to the street vacation.

City Attorney Rennie stated that street vacations are addressed on a case-by-case basis and the granting of vacation does not set precedence for others. He clarified that if the right-of-way is not needed by the City, it is appropriate to vacate it for the project. He pointed out that Alhambra Drive has sufficient right-of-way to grant the vacation.

In response to Council questions, Senior Planner DiDonato described the original plan for this proposed home, which was to be sited farther up the hill. He noted that the Planning Commission advised the owner to seek other solutions, leading to the new design which includes the request for street vacation. He explained that if the right-of-way vacation were not granted, an encroachment permit would be needed for the very high retaining walls that would be required for this project, and a variance would be needed due to the fact that the driveway would be in the

front yard setback. He confirmed that the applicant possesses two legally-created lots on Alhambra Drive with the expectation to be able to receive achieve economic benefit from those lots.

City Attorney Rennie stated that it could be considered a taking of property if the applicant is not granted the ability to build. He clarified that the right to develop must be consistent with local rules and to balance the public's interest with building codes.

Discussion ensued regarding the property merger and the density transfer as applied to this project.

**MEETING EXTENSION:** at this time, being 10:30 p.m., Councilmember Braunstein made a motion, seconded by Councilmember Feierbach, to extend the meeting by 30 minutes (no vote was taken).

Councilmember Feierbach noted that there are larger homes in the area than the proposed house and concurred that the applicant has been responsive to staff and Planning Commission direction.

**ACTION:** On a motion by Councilmember Lieberman, seconded by Councilmember Braunstein, Resolution 2013-007 Vacating a Portion of Alhambra Drive and Reserving A 5' Public Utility Easement Adjacent to the Two Parcels (APN's 043-232-080 And 043-232-230) was approved by a show of hands (3-1, Wozniak no, Warden recused).

**ACTION:** On a motion by Councilmember Feierbach, seconded by Councilmember Braunstein, Resolution 2013-008 Approving a Major Encroachment Permit for the Construction of Retaining Walls Within a Portion of the Public Right-Of-Way Adjacent to Parcels (APN's 043-232-080 and 043-232-230) Located on Alhambra Drive was approved by a show of hands (3-1, Wozniak no, Warden recused).

Mayor Wozniak stated that she voted no on this item because a variance would have been a better option for this project.

**ACTION:** On a motion by Councilmember Lieberman, seconded by Councilmember Braunstein, Resolution 2013-009 Approving a Lot Line Adjustment to Consolidate Two Parcels (APN 043-232-080 And 043-232-230) on Alhambra Drive was approved by a show of hands (4-0, Warden recused).

**ACTION:** On a motion by Councilmember Braunstein, seconded by Councilmember Lieberman, Resolution 2013-010 Approving Floor Area Transfer From one Vacant Lot (APN 043-165-140) to Two Consolidated Lots Located On Alhambra Drive (APN's 043-232-080 and 043-232-230) was approved by a show of hands (3-1, Wozniak no, Warden recused).

Mayor Wozniak stated that there is a flaw in the San Juan Plan which allows the transfer of density from a substandard lot.

In response to Councilmember Feierbach's recommendation for a communication plan with the neighbors, Senior Planner DiDonato stated that this condition could be added in the Construction Management Plan.

**ACTION:** Councilmember Braunstein made a motion, seconded by Councilmember Lieberman, to approve the Single Family Design Review.

Councilmember Braunstein commented regarding the option of creating a parking space or landscaping in the newly-acquired right-of-way. Senior Planner DiDonato clarified that the Planning Commission recommended the elimination of the parking space. Councilmember Lieberman suggested asking the neighbors.

City Attorney Rennie recommended that this option not be included as a condition and suggested that outreach be performed with the neighbors.

**ACTION:** On the previous motion, Resolution 2013-011 Approving a Single Family Design Review to Allow Construction of a New 2,372 Square-Foot Single-Family Residence on Two Vacant Lots on Alhambra Drive (APN's 043-232-080 and 043-232-230) was approved by a show of hands (3-1, Wozniak no, Warden recused) with conditions amended to require a communication plan to be added to the Conditions of Approval.

Mayor Wozniak stated that the home is too big and tall and imposes on the landscape.

**ACTION:** On a motion by Councilmember Braunstein, seconded by Councilmember Feierbach, Resolution 2013-012 Accepting a Conservation Easement and an Associated Ownership/Open Space Management Plan for the Sending Parcel of an Approved Floor Area Transfer From One Vacant Lot (APN 043-165-140) to Two Consolidated Lots Located On Alhambra Drive (APN's 043-232-080 And 043-232-230) was approved by a show of hands (3-1, Wozniak no, Warden recused).

**RECESS: 10:50 P.M.**

**RECONVENE: 11:00 P.M.**

Councilmember Warden returned to the dais.

**MEETING EXTENSION:** at this time, being 11:00 p.m., Mayor Wozniak made a motion, seconded by Councilmember Braunstein, to extend the meeting by 30 minutes (no vote was taken).

## **OTHER BUSINESS**

### **Consideration of Sewer Lateral Program and Introduction of an Ordinance Implementing the Program**

Public Works Director Oskoui defined a sewer lateral, and pointed out issues related to laterals with regard to inflow and infiltration of storm water into the sewer system. He noted that this results in the City having to pay to treat clean water. He outlined reasons why laterals are not maintained, and noted that homeowners are often unaware of their responsibility for the lateral. He pointed out that if laterals are not maintained, it is expensive to repair once it fails. He



described the City's current program relative to sewer laterals, including education and smoke testing. He noted that 4100 parcels have been tested to date, with another 4,000 remaining. He outlined the problems that have been encountered regarding laterals.

Public Works Director Oskoui described the components in the proposed ordinance, including the requirement to perform a video inspection when a permit is issued for a project exceeding \$50,000 in value, as well as a requirement for inspection at point of sale. He pointed out that some cities require this. He noted that flexibility can be provided for extenuating circumstances.

In response to Mayor Wozniak, Public Works Director Oskoui stated that current regulations require a homeowner to repair a sewer lateral, and by not doing so, the owner is in violation of the Municipal Code. He stated that the percentage of short sales and foreclosures in home sales in Belmont is small.

Discussion ensued regarding the logistics of the proposed point of sale requirement and the length of time that an inspection would remain valid. Public Works Director Oskoui explained that this could be addressed in an administrative regulation, and that five years could be reasonable.

(At this time, being 11:30 p.m., Councilmember Feierbach left the meeting.)

**MEETING EXTENSION:** at this time, being 11:30 p.m., Councilmember Warden made a motion, seconded by Mayor Wozniak, to extend the meeting by 30 minutes (no vote was taken).

**Michael Verdone**, SAMCAR (San Mateo County Association of Realtors), requested a continuance on this matter. He expressed appreciation for the educational outreach and the smoke testing program, and does not support the requirement of inspection at point of sale. He pointed out that only two percent of the homes in Belmont are sold every year, and that it would take 50 years to get all homes inspected. He noted that this requirement could affect a home sale.

**Paul Stewart**, SAMCAR (San Mateo County Association of Realtors), stated that he does not support the point of sale inspection requirement. He pointed out that this will not address inflow and infiltration problems and could impact the home sale. He stated that smoke testing has been effective. He noted that short sales comprise 42 percent of sales in the past year.

**Greg Bryant** expressed support for smoke testing. He stated that point of sale inspection requirements violates rights of owners, since the owner has the right to sell a home as-is. He clarified that the seller is required to disclose any issues with the home, and that sales contracts already outline who is responsible for what work needs to be done.

**Robert Pedro**, SAMCAR (San Mateo County Association of Realtors), expressed support for smoke testing and public outreach. He noted that delays in real estate transactions can be costly and a burden.

City Clerk Cook noted that two people who wanted to speak had to leave, and submitted comments, which she read. Neither speaker supported a point of sale inspection requirement.

**Perry Kennan**, Belmont resident, requested information regarding the cost of smoke testing versus video testing.

Public Works Director Oskoui clarified that smoke testing does not always identify all issues, and a video inspection is more comprehensive.

Discussion ensued.

Councilmember Warden stated that he understands why the real estate community is opposed to the point of sale inspection requirement. He expressed concerns regarding homes with high turnover rates and the need to repeat the inspection within a short period of time. He pointed out that problems with laterals affect the entire community and is a public safety issue. He noted that smoke testing does not identify all problems. He clarified that the requirement of inspection at point of sale will not stop the sale of the home. He stated that sewer fees are affected by problems with laterals. He supports the point of sale requirement and concurred with the need to provide flexibility for short sales. He commented that he does not desire to hold up the close of escrow.

Councilmember Lieberman stated that this matter is one of health and safety and consumer protection. He concurred that problems with sewer laterals affect sewer fees. He noted that point of sale inspection requirement is a tool, and that smoke testing does not identify all issues. He commented that he does not want the City to get involved in real estate transactions, and recommending not requiring the lateral to be fixed prior to close of escrow. He stated this is a negotiable matter between the buyer and seller. He suggested a program of requiring all homes to have their laterals inspected. He does not support the ordinance as presented.

**MEETING EXTENSION**: at this time, being midnight, Councilmember Warden made a motion, seconded by Councilmember Braunstein, to extend the meeting by 30 minutes (no vote was taken).

Councilmember Braunstein expressed support for the point of sale requirement as a way to inform the consumer. He noted that the buyer can choose whether or not to proceed with the home purchase based on the inspection. He expressed support for providing flexibility in the program.

Discussion ensued regarding the use of an escrow account to pay for the lateral repair.

In response to Council questions, Mr. Stewart outlined the requirements included in the City of South San Francisco's program. He noted that the City holds the escrow and will do the work if it is not taken care of by the homeowner. He outlined the City of Pacifica's program wherein the lender holds the escrow.

City Attorney Rennie suggested that the City of Belmont not get involved in private property transactions.

Mayor Wozniak stated that point of sale inspection is another tool. She noted this is an important issue, as inflow and infiltration is a problem. She expressed support for a point of sale inspection but pointed out that the work should not have to be completed before close of escrow.

Discussion ensued.

Public Works Director Oskoui outlined the proposed changes in the draft ordinance based on tonight's discussion.

Councilmember Lieberman suggested removing the escrow and financial requirement section.

Councilmember Warden pointed out that only half of the existing sewer lateral problems have been fixed based on smoke testing performed to date. He expressed a desire to have a financial component to leverage repairs being made.

**MEETING EXTENSION**: at this time, being 12:30 p.m., on a motion by Mayor Wozniak seconded by Councilmember Warden, the meeting was extended by 30 minutes (3-1, Lieberman no, Feierbach absent).

Council concurred to have staff revise the ordinance for future introduction and first reading.

City Manager Scoles pointed out that it was unlikely that any city requires that all homes be inspected.

#### **Review of the FY12/13 Council Priorities – Progress Report**

City Manager Scoles noted that this is a report to the City Council that requires no action.

#### **COMMISSION, COMMITTEE, AND COUNCIL INTERGOVERNMENTAL ASSIGNMENT UPDATES, AND STAFF ITEMS**

##### **Verbal report from Councilmembers on Intergovernmental (IGR) and Subcommittee Assignments**

Mayor Wozniak noted that she is unable to continue in the assignment for the Peninsula Cities Consortium for High Speed Rail. She recommended appointing Kristin Mercer, who is able to attend the meetings. Council concurred. She also stated that the high speed rail policy group recently met, and policy issues would need to be discussed by the City Council at a future meeting.

##### **Council Intergovernmental Assignments for 2013**

Council concurred that due to the lateness of the hour, this matter would be continued to the next meeting.

#### **PUBLIC COMMENTS AND ANNOUNCEMENTS (if any)**

**Andy Williams**, Belmont resident, expressed his desire to save the San Juan Canyon.

**ADJOURNMENT** at this time, being 12:45 A.M.

**City Clerk**

**Terri Cook**